

## REMARKS

By this amendment, applicants have amended the claims to substantially approximate those of the corresponding composition application, i.e., US Patent No. 09/859,862 to Aronson et al.

The changes made are believed to overcome the various rejections by the Examiner under 35 USC § 112, first paragraph. In particular:

(1) Applicants more specifically define the dispersion stabilizer and note that they must be capable of forming a network in aqueous phase which immobilizes the dispersed structured oil phase (see page 12, line 15 to page 13, line 2 and particularly page 12, lines 24-26);

(2) Applicants define the skin compatible oil (see page 7, lines 28-29);

(3) Applicants define structurants (including new claims 15-18) and note how structurant must form 3-dimensional network (page 9, line 24) comprising finely divided solid particles below about 25 microns (page 9, line 5) which build oil viscosity at temperature below 35°C (page 9, lines 1-2).

Applicants have made other amendments to conform with changes made in the composition case but the most significant change, as noted, is to more clearly define and more specifically define claim elements which, as noted, applicants believe should overcome all rejections under 35 USC § 112.

Specifically, the claim elements are defined with enough particularity that no undue experimentation is required and one skilled in the art can readily know which components make the invention function. In this regard, it is respectfully requested that all such rejections under 35 USC § 112 be withdrawn.

Applicants have also amended process step (i) to recite that the process of the invention comprises directly mixing the oil phase with the aqueous rather than, for example, first forming a precursor solution comprising oil before combining with second aqueous solution. As noted below, this is believed to clearly distinguish from cited art.

More specifically, at page 7 of the Office Action, the Examiner rejects claims under 35 USC § 102(b) as allegedly anticipated by US Patent no. 5,759,969 to Tsaur et al. The reference is said to disclose the process of the invention using ingredients of the invention. The Examiner thus alleges that the composition are inherently the same. This rejection is respectfully traversed for reason set forth below.

The processes of Tsaur et al and of the invention are fundamentally different and accordingly result in fundamentally different compositions.

Specifically, Tsaur et. al is directed to a process for preparing aqueous compositions containing so called hydrogel particles (formed by two different polymers) wherein skin benefit agent is entrapped within the particles. That is, the hydrogel particles “trap” water insoluble benefit agents within a network formed by these two polymers. The polymer network so formed (i.e. hydrogel) is able to disintegrate smoothly when rubbed on a substrate such as skin thereby releasing the entrapped benefit agent (Column 2, line 64 to Column 3, line 1)

The process of Tsaur is directed specifically to formation of the benefit agent entrapping, hydrogel particles. According to the process, a benefit agent is first dispersed in a solution of the two polymers to form a hydrogel precursor solution and this precursor solution or dispersion is then injected into a second aqueous solution and forms “elongated” soft hydrogel noodles (Column 5, lines 7-9). The prehardened soft hydrogel noodles are then broken to irregular shapes of hydrogel particles using low shear mixing devices (Column 5, lines 11-13). In short, the skin benefit agents of Tsaur are trapped within and are part of an insoluble soft polymer particle. As noted, the

Tsaur patent is directed specifically to making such particles (in which benefit agent is contained).

By contrast, the dispersion of structured skin compatible oils of the subject invention are not trapped or embedded in a hydrogel particle but rather exist by themselves as discretely dispersed droplets in the final aqueous composition.

As such, the process by which applicants prepare the final dispersion does not involve a step of first dispersing oil in a hydrogel precursor. Rather, the subject invention comprises directly mixing (See amended claims) the structured oil phase into the aqueous phase followed by passing the mixture through a screen.

As Tsaur clearly does not teach or suggest directly mixing a structured oil phase with an aqueous phase (as noted Tsaur first forms a precursor solution), the reference clearly cannot and does not anticipate or suggest the subject invention.

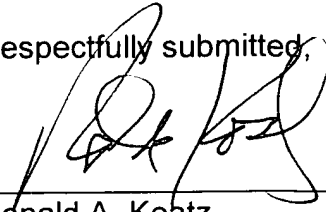
In view of the amendments and discussion above, it is respectfully requested that the rejection over Tsaur et al be withdrawn and that claims, as amended, be allowed.

Finally, at page 8 the Examiner rejects claims over US Patent no. 6,395,690 under the judicially created Doctrine of Obviousness - type double patenting. At page 9, the same rejection is used over US Patent no. 6,218,348.

In this regard, applicants submit a Terminal Disclaimer terminally disclaiming that portion of any claims which would expire beyond the expiration date of claims pending in US Patent no. 6,395,690 or in US Patent no. 6,218,348.

In view of the amendment and comments above (including submission of Terminal Disclaimer), it is respectfully requested that the Examiner reconsider, withdraw all rejection of the claims, and allow the claims now pending.

Respectfully submitted,



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